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OUR FILE NO.  
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February 17, 1998

Ms. Magalie R. Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: MM Docket No. 97-234  
GC Docket No. 92-52  
GEN Docket No. 90-264

Dear Ms. Salas:

Transmitted herewith, on behalf of Vermont Public Radio and Monroe Board of Education are the original and four copies of their Reply Comments in the above-captioned rule making proceeding.

Please refer any questions concerning this matter directly to this office.

Respectfully submitted,

  
John Crigler

JC:ah  
Enclosure

Before The  
**Federal Communications Commission**  
Washington, D.C. 20554

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In the Matter of	)	
	)	
Implementation of Section 309(j) of	)	
the Communications Act--	)	
Competitive Bidding for Commercial	)	MM Docket No. 97-234
Broadcast and Instructional	)	
Television Fixed Service Licenses	)	
	)	
Reexamination of the Policy	)	
Statement on Comparative	)	GC Docket No. 92-52
Broadcast Hearings	)	
	)	
Proposals to Reform the	)	
Commission's Comparative Hearing	)	GEN Docket No. 90-264
Process to Expedite the Resolution of	)	
the Cases	)	

**REPLY COMMENTS OF VERMONT PUBLIC RADIO AND**  
**MONROE BOARD OF EDUCATION**

Vermont Public Radio ("VPR") and Monroe Board of Education  
("Monroe") hereby submit their Reply Comments in response to the above-  
captioned Notice of Proposed Rule Making ("NPRM").<sup>1</sup> VPR and Monroe  
support the Joint Comments of National Public Radio, Inc., National  
Federation of Community Broadcasters and the Corporation for Public

<sup>1</sup> In the Matter of Implementation of Section 309(j) of the Communications Act--Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses *et al*, Noticed of Proposed Rule Making, MM Docket No. 97-234, FCC 97-397, released November 26, 1997.

Broadcasting in urging the Commission not to adopt competitive bidding procedures for non-reserved FM translator frequencies for which noncommercial broadcast licensees apply.

### I. Vermont Public Radio and Monroe Board of Education.

VPR is the licensee of noncommercial educational FM Stations WVPR(FM), Windsor, Vermont; WVPS(FM), Burlington, Vermont; and WRVT(FM), Rutland, Vermont. WVPS(FM) operates on a non-reserved frequency. In addition, VPR is an applicant for new full-service stations at Norwich and St. Johnsbury, Vermont, and for a new translator station to operate on a non-reserved frequency at Manchester, Vermont.

Monroe is the licensee of WMMR(FM), Monroe, Connecticut; WRXC(FM), Shelton, Connecticut; WGRS(FM), Guilford, Connecticut; and WGSK(FM), South Kent, Connecticut. In addition, Monroe is the licensee of the following translator stations: W22OAC, Fairfield, Connecticut; W252AS, New Haven, Connecticut; W218AV, Warren, Connecticut; W264AJ, Sag Harbor, New York; W233AI, Sag Harbor, New York; and W233AG, New London, Connecticut. Its translator stations operate primarily on non-reserved frequencies.

Neither VPR nor Monroe could provide the service they now provide with reserved frequencies alone.

Although the Commission has long recognized the desirability of delivering noncommercial broadcast services over regional or state-wide areas,

See 47 C.F.R. § 73.502, the achievement of this goal is extremely difficult in congested areas such as New England. Frequencies of any sort are scarce. The general scarcity of frequencies is compounded by the additional restrictions on the use of reserved channels that result from Channel 6 television stations and the proximity of the Canadian border. At least four Channel 6 stations impose significant limitations on the frequencies available to VPR and Monroe: Station WVPI-TV, Philadelphia, Pennsylvania; Station WRGB-TV, Schenectady, New York; Station WCSH-TV, Portland, Maine; and Station WLNE-TV, New Bedford, Massachusetts.

One example will illustrate the difficulties that can be created by the proximity of Canada. On January 7, 1997, VPR filed an application for a new station to operate on 88.5 MHz at St. Johnsbury, Vermont. Technical aspects of the proposal were carefully tailored to protect a vacant Canadian allotment for Thetford-Mines, Quebec. On October 20, 1997 the FCC returned the application because it was short-spaced to a vacant co-channel allotment in Montreal, Quebec. That allotment did not exist at the time VPR's initial application was filed, but was agreed to by the US and Canada after the VPR application was filed. In order to accommodate this new allotment, VPR had to reduce substantially the effective radiated power of its station and refile its application. That application is pending, subject to a petition for reconsideration.

In light of the severe restrictions placed upon reserved frequencies, the Commission in 1990 authorized noncommercial applicants to operate

translators on any of the 80 non-reserved channels, as well as the 20 reserved channels.

We expect this decision to reduce the number of actual interference problems we face, including interference to TV stations operating on Channel 6, since the wider range of channels from which to choose often will allow applicants to choose channels on which the margin of predicted interference protection is greater.

*Report and Order, FCC 90-375(released December 4, 1990).*

The Commission should not retreat from a position which has served noncommercial broadcasters and the public well for nearly a decade.

## **II. The Communications Act Exempts Public Broadcast Stations from Competitive Bidding Procedures.**

As amended by the Balanced Budget Act of 1997, Section 309(j)(1) of the Communications Act provides that:

If...mutually exclusive applications are accepted for any initial license or construction permit, then, except as provided in Paragraph (2), the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding that meets the requirements of this subsection.

Paragraph 2 provides that:

The competitive bidding authority granted by this subsection shall not apply to licenses or construction permits issued by the Commission:

(C) for stations described in Section 397(6) of this act.

Section 397(6) defines "noncommercial educational broadcast station" and "public broadcast station." Those "stations" are defined by the non-profit or governmental nature of the operator, not by the frequencies on

which the station operates. Commission rules generally permit qualified noncommercial entities to operate on either reserved or non-reserved FM frequencies. See 47 C.F.R. § 73.513.

The Commission proposes as a “tentative conclusion,” NPRM, paragraph 94, that its competitive bidding procedures should be extended to include mutually exclusive applications for secondary broadcast services, such as FM translators. The language of the Act does not support such conclusion. The Act clearly exempts from competitive bidding procedures applications for public and noncommercial “stations” described in Section 397(6) of the Communications Act. By subjecting all non-reserved frequencies to competitive bidding, the Commission would fail to give the exemption set forth in Section 309(j)(2)(C) the scope that Congress intended.

### III. Competitive Bidding Procedures are not Needed.

The competitive bidding procedures proposed by the Commission arise primarily from the invalidation of the Commission’s comparative hearing procedures for a full-service stations. See NPRM, paragraphs 2-6. As the NPRM concludes after summarizing the history of the Commission’s comparative criteria, “Against this regulatory background, Congress, as part of the Balanced Budget Act of 1997, amended Section 307(j) of the Communications Act to require expressly that the Commission use competitive bidding procedures to resolve most initial licensing proceedings involving mutually exclusive applications.”

Comparative hearings have never been used to award FM translator licenses. The extension of the competitive bidding procedures to FM broadcast services is an undesirable solution to a non-existent problem.

Section 74.1233 of the Commission's Rules sets forth a series of objective criteria for deciding which of two or more FM translator applications the Commission will grant if mutually exclusive applications are filed. These rules were not affected by the decisions invalidating the criteria used to resolve mutually exclusive applications for full-service stations. See NPRM, paragraphs 4-5. The NPRM cites no evidence indicating that the criteria set forth in Section 74.1273 have failed to serve the public interest well.

#### **IV. Competitive Bidding Procedures would not Expedite License Grants.**

The Commission favors competitive bidding procedures over comparative hearing procedures on grounds that "auctions would lead to a more speedy resolution" of mutually exclusive applications for full-service stations, NPRM, paragraph 17. There is, however, nothing to suggest that the bidding procedures would be more efficient than current procedures for awarding translator licenses.

Under the proposed procedures, applicants who wish to apply for an FM translator station would be required to file "the engineering data contained in the pertinent FCC form," NPRM, paragraph 66, in addition to FCC Form 175. FCC Form 349, the form used to apply for FM translator

stations, consists almost entirely of engineering data. Thus, it does not appear that bidding procedures would reduce the burdens imposed by current application forms or lead to a "more speedy resolution" of mutually exclusive applications.

**V. Competitive Bidding Procedures would Impose a Substantial Burden on Noncommercial Applicants.**

The NPRM warns that, "prospective bidders for various secondary services, including...FM or television translators, should recognize that, by changing our method of assigning licenses for such facilities, we have not changed the basic character of any of these secondary services." NPRM, paragraph 46. The import of this statement is that those who acquire a translator license at auction will not acquire any additional protection from interference. Translators will remain a "secondary" service, subject to interference from co-channel or adjacent-channel primary stations. Indeed, it is possible that a translator frequency could be rendered completely unusable by the time that full payment of a winning bid is due. While commercial broadcasters may be willing and able to take the risk of losing the value of a substantial bid, the risk will intimidate most noncommercial broadcasters, who operate with limited financial resources and often depend upon public or governmental support. The Commission's proposal to require upfront payments, and possibly bid withdraw penalties, further decreases the likelihood that noncommercial entities will be able to bid on translator frequencies if the proposed competition bidding procedures are adopted.



## Conclusion

The Communications Act as amended by the Balanced Budget Act of 1997 does not require that the Commission use competitive bidding procedures to license FM translator stations. Indeed, imposition of such procedures is inconsistent with provisions of the Act that explicitly exempt noncommercial stations from competitive bidding procedures.


Because comparative hearings have never been used to license translator stations, competitive bidding procedures are not needed to remedy the inadequacies of a comparative hearing process.

The procedures proposed for the comparative bidding process are actually more cumbersome than the procedures now used to award translator licenses, and thus would not advance the goals of simplifying application procedures and speeding the issuance of grants for translator stations.

Finally, the secondary nature of the translator service, when combined with the proposed down payment and penalty provisions of the competitive bidding procedures, create risks that will prevent most noncommercial broadcasters from bidding for non-reserved translator frequencies.

Respectfully submitted,

**Vermont Public Radio  
Monroe Board of Education**

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